

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

COLLEGE OF DENTAL SURGEONS OF
PUERTO RICO,

Plaintiff,

v.

TRIPLE S MANAGEMENT INC.,
et al.,

Defendants.

Civil No. 09-1209 (JAF)

OPINION AND ORDER

On February 11, 2009, Plaintiff, the College of Dental Surgeons of Puerto Rico, brought this action in Puerto Rico court, on its own behalf and on behalf of its members, against twenty-six Defendants¹ who are insurance companies, health services, and medical plan organizations that contract with dentists to provide services to clients in Puerto Rico. Docket No. 50-2. Plaintiff brought nine claims for violations of Puerto Rico law and sought damages and

¹ Defendants are Triple S Management, Inc. ("Triple S Management"), Triple S, Inc. ("Triple S"), Triple C, Inc. ("Triple C"), American Health, Inc. ("American Health"), Auxilio Platino, Inc. ("Auxilio Platino"), Connecticut General Life Insurance Co. ("CGLIC"), Cruz Azul de PR, Inc. ("Cruz Azul"), Delta Dental Plan of Puerto Rico, Inc. ("Delta Dental"), First Medical Health Plan of Puerto Rico ("First Medical"), International Medical Card, Inc. ("International Medical Card"), Humana Health Plans of Puerto Rico, Inc. ("Humana Health"), Humana Insurance of Puerto Rico, Inc. ("Humana Insurance"), Medical Card System, Inc. ("MCS"), MCS Health Management Options, Inc. ("MCS Health Management"), MCS Advantage, Inc. ("MCS Advantage"), Metropolitan Life Insurance Company ("MetLife"), Option Health Care Network, Inc., Preferred Health, Inc., Preferred Medicare Choice, Inc. ("Preferred Medicare Choice"), SDM Health Management, Inc., Mennonite General Hospital, Inc. ("MGH"), MAPFRE Life Insurance Company ("MAPFRE"), MMM Health Care, Inc. ("MMM"), Cooperativa de Seguros de Vida de Puerto Rico ("COSVI"), and Asociación de Compañías de Seguros de Puerto Rico, Inc. ("ACODESE").

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1 declaratory and injunctive relief requiring Defendants not to
2 continue to violate the law. Id.

3 On March 3, 2009, Defendants MetLife and CGLC ("the removing
4 Defendants") removed to federal court based on the Class Action
5 Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), and federal question
6 jurisdiction under 28 U.S.C. § 1331. Docket No. 1. On March 27, 2009,
7 we remanded to Puerto Rico court for failure to join all Defendants
8 in the removal petition. Docket No. 35. On the same day, we then
9 stayed the remand order and ordered all parties to brief the issue of
10 whether we had jurisdiction. Docket No. 37.

11 On April 1, 2009, Plaintiff moved to remand. Docket No. 39. On
12 April 13, 2009, the removing Defendants opposed. Docket No. 50. On
13 the same day, Defendants MGH, MAPFRE, ACODESE, First Medical,
14 International Medical Card, Humana Health, Humana Insurance, MCS, MCS
15 Health Management, MCS Advantage, Triple S Management, Triple S,
16 Triple C, American Health, Auxilio Platino, Cruz Azul, MMM, Preferred
17 Medicare Choice, Delta Dental, and COSVI ("the opposing Defendants")
18 all moved for remand. Docket Nos. 51, 52, 55, 56, 57, 58, 61, 62, 66,
19 68, 75. The opposing Defendants argued, inter alia, that this case is
20 not a class action because Plaintiff did not sufficiently define the
21 class. See, e.g., Docket No. 57.

22 A defendant may remove any civil action from state court to
23 federal district court if the district court has original federal
24 question or diversity jurisdiction over the claim. 28 U.S.C. § 1441;

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1 see 28 U.S.C. §§ 1331-32. If the district court discovers that it has
2 no jurisdiction, it must remand the claim. 28 U.S.C. § 1447. If an
3 action has multiple defendants, generally all defendants must consent
4 to the removal petition. Lapides v. Bd. of Regents, 535 U.S. 613, 620
5 (2002) (citing Chi., Rock Island, & Pac. Ry. v. Martin, 178 U.S. 245
6 (1900)).

7 A defendant may remove pursuant to the federal court's original
8 jurisdiction under CAFA, which provides for original jurisdiction
9 over class actions in which the amount in controversy exceeds
10 \$5,000,000, if any member of the plaintiff class is a citizen of a
11 state different from any defendant. 28 U.S.C. § 1332(d). If a
12 defendant in a multi-defendant case removes to federal court based on
13 CAFA, he need not obtain the consent of other the defendants. See id.
14 Federal Rule of Civil Procedure 23 describes class actions, but is
15 silent as to what constitutes a class. However, "the requirement that
16 there be a class will not be deemed satisfied unless the class
17 description is sufficiently definite so that it is administratively
18 feasible for the court to determine whether a particular individual
19 is a member." See 7A Charles Alan Wright, Arthur R. Miller & Mary Kay
20 Kane, Federal Practice and Procedure § 1760, at 139-40 (3d ed. 2005);
21 see also Crosby v. Social Sec. Admin., 796 F.2d 576, 580 (1st Cir.
22 1986) (citing Wright & Miller).

23 Here, because all Defendants do not consent to the removal,
24 removal is appropriate only if the case meets the criteria for

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1 jurisdiction under CAFA. However, the removing Defendants cannot
2 establish that this is a class action, as Plaintiff never attempts to
3 define a class in the complaint. See Fed. R. Civ. P. 23; Wright,
4 Miller & Kane, Federal Practice and Procedure, supra, at 139-40.
5 Plaintiff describes itself as "a legal entity . . . which by law
6 mandatorily includes every professional who practices dental surgery
7 in Puerto Rico, that is, every dentist." Docket No. 50-2. Plaintiff
8 states that it also represents "the dentistry class in Puerto Rico."
9 Id. However, Plaintiff never says exactly who it purports to
10 represent as a part of the current lawsuit. See id. Because Plaintiff
11 has not defined a class under Federal pleading requirements, this
12 case is not a class action and, therefore, does not meet the
13 jurisdictional requirement of CAFA. See 28 U.S.C. § 1332(d); Fed. R.
14 Civ. P. 23; Wright, Miller & Kane, Federal Practice and Procedure,
15 supra, at 139-40.

16 Consequently, we **GRANT** Plaintiff's motion to remand, Docket
17 No. 39, and **REMAND** to the court of first instance.

18 **IT IS SO ORDERED.**

19 San Juan, Puerto Rico, this 21st day of April, 2009.

20 s/José Antonio Fusté
21 JOSE ANTONIO FUSTE
22 Chief U.S. District Judge